

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter of)

Reorganization and Revision)

Parts 1, 2, 21 and 94 of the)

Rules to Establish a New Part 101)

Governing Terrestrial Microwave)

Fixed Radio Service)

WT Docket No. 94-148

To: The Commission

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COMMENTS
OF
THE SOUTHERN COMPANY

THE SOUTHERN COMPANY

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EXECUTIVE SUMMARY

Southern supports the premise of this proceeding, and agrees that the microwave industry would benefit from a comprehensive set of point-to-point microwave rules. Southern appreciates the Commission's efforts to streamline the private operational-fixed microwave and the point-to-point microwave rules to ease the regulatory burden on licensees. However, it recommends other amendments to the proposed Part 101 rules that further streamline the existing Part 21 and Part 94 microwave rules. Southern believes its recommendations are consistent with the goals of this proceeding. They foster efficient use of the microwave spectrum, eliminate onerous regulatory filing requirements, and promote equitable treatment between Part 21 and Part 94 microwave licensees. Specifically, Southern recommends that the Commission: (1) allow Part 94 licensees to lease reserve capacity to common carriers for their customer traffic, (2) allow both common carrier and non-common carrier use and licensing of Part 21 microwave transmitters; (3) extend the 21-day minor modification rule to Part 94 licensees; (4) adopt the Part 94 application procedures for all microwave services; and (5) extend the BSTA policy to Part 94 licensees.

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COMMENTS
OF
THE SOUTHERN COMPANY

The Southern Company ("Southern"), through its undersigned counsel and pursuant to Section 1.415 of the Federal Communications Commission's rules, submits the following Comments on the above-captioned Notice of Proposed Rule Making ("NPRM").^{1/}

STATEMENT OF INTEREST

1. Southern and its operating companies are licensees of numerous private operational-fixed microwave facilities

^{1/} In The Matter of Reorganization and Revision Parts 1, 2, 21 and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Service, WT Docket No. 94-148, Notice of Proposed Rule Making, adopted December 9, 1994, 60 Fed. Reg. 2722 (January 11, 1995), Order, DA95-140, extending the Comment date to February 17, 1995 and Reply Comment date to March 17, 1995 (February 2, 1995).

throughout their service areas.^{2/} Southern primarily uses its private operational-fixed microwave facilities for internal communications and for the carriage of traditional private microwave communications. Additionally, Southern desires to use its existing microwave authorizations to carry commercial mobile radio service (i.e., interconnected Specialized Mobile Radio) traffic over its private microwave system. In this regard, Southern has a significant interest in the creation of the new Part 101, terrestrial microwave fixed radio rules.

INTRODUCTION

2. The Commission proposes to simplify the rules for common carriers and private operational-fixed microwave services, currently contained respectively in Parts 21 and 94 of the Commission's rules, by consolidating these rules into a new Part 101. The proposed Part 101 rules make very

^{2/} Southern is an electric utility holding company which wholly-owns the common stock of five electric utility operating companies -- Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company -- and a system service company -- Southern Communications Services, Inc. -- which together operate an integrated electric utility system which serves over 11 million consumers in a contiguous area of 122,000 square miles, including most of the State of Alabama, almost all of the State of Georgia, the panhandle of Florida and 23 counties in southeastern Mississippi.

few substantive rule changes. Rather, it is primarily a consolidation of Parts 21 and 94 rules, creating a comprehensive rule part of the combined services. Nevertheless, the NPRM indicates the Commission's willingness to entertain substantive amendments to its microwave rules.^{3/} Accordingly, Southern appreciates this opportunity to submit the following Comments for the Commission's consideration in this proceeding.

COMMENTS

3. Southern supports the Commission's underlying goal to simplify and streamline the existing common carrier and private operational-fixed microwave rules. It agrees that due to the commonality of these rules and the industry's move to create common standards and coordination procedures, it is beneficial to consolidate these rules into one comprehensive part. Because these microwave services also share virtually the same frequency bands, with the exception of the 2 GHz band, as well as adhere to similar technical and operational rules, Southern believes that further streamlining of these rules, as recommended herein, is achievable and desirable. Furthermore, Southern believes

^{3/} NPRM at ¶ 7.

that these services should be regulated alike, where possible, to create an even more streamlined set of regulations.

I. Private Operational-Fixed Microwave Licensees Should Be Allowed to Lease Reserve Capacity to Common Carrier Licensees

4. In the NPRM, proposed Section 101.135 incorporates existing Section 94.17 governing shared use of radio stations and the offering of private carrier service. The proposed rule merely mimics Section 94.17 in that it maintains the eligibility restrictions regarding shared use of private operational-fixed microwave facilities.

5. Southern believes this is the opportune time to eliminate any restriction that would preclude private operational-fixed microwave licensees from leasing reserve capacity to common carrier entities for their customer traffic.^{4/} Utilities must build microwave systems to meet long-term, future growth requirements. For this reason, systems sometimes have reserve bandwidth capacity which is not needed immediately for utility traffic. In addition, improvements in transmission techniques and increases in

^{4/} Part 94 licensees can currently lease microwave capacity to common carriers but only for their internal traffic.

transmission rates have created substantial efficiency in private operational-fixed microwave spectrum use, leaving some microwave spectrum available for shared use. Part 94 licensees are sometimes hardpressed to find other eligible users to share their reserve microwave capacity. Yet, there are common carrier entities who are willing to lease the reserve capacity but are prohibited from doing so by the existing Part 94 rules.

6. Furthermore, many SMR licensees, like Southern, had intentions of carrying their SMR traffic over their Part 94 microwave systems, but will be precluded from doing so because the SMR systems will be reclassified as CMRS.^{5/} This unanticipated regulatory event has interrupted previously planned communications systems. Certainly, with the new CMRS regulatory regime, the Commission must make appropriate changes to other rule parts that are affected, albeit tangentially, by the new CMRS rules. The Part 94 microwave rules are an example of other rules impacted by the CMRS proceeding.

^{5/} In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, 9 F.C.C. Rcd. 1411 (1994).

7. Since one of the goals of this proceeding, as the Commission indicates, is to "encourage more efficient use of microwave spectrum,"^{6/} then it is in the public interest to allow Part 94 microwave licensees to lease reserve capacity to common carriers. The Commission should encourage efficient use of microwave spectrum by eliminating the eligibility and permissible use limitations on the proposed Section 101.135.

8. Allowing private operational-fixed microwave licensees to lease reserve capacity to common carriers does not render the service a common carrier one. In fact, it is merely a private carrier offering to a customer who happens to be a common carrier.^{7/} The Part 94 licensee still has the discretion to refuse a customer's request for service, and can be discriminatory in service offerings and rates.^{8/} Therefore, the underlying intent of the existing and proposed permissible use rules enunciated in 94.9 and 101.603(b)(i), respectively, is not undermined. The Part 94 service will still be a private one. Therefore, Southern

^{6/} NPRM at ¶ 7.

^{7/} Obviously, the common carriers must meet all FCC regulations pertinent to their status.

^{8/} Nat'l Ass'n of Regulatory Utility Comm'rs v. FCC, 525 F.2d 630, 641 (D.C. Cir. 1976).

recommends deletion of subsection 1 of the proposed rule as well as deletion of any language referring to eligibility limitations. Southern recommends that Section 101.35 should read as follows:

Licensees of Private Operational-Fixed radio stations may share the use of their facilities on a non-profit basis or may offer service on a for-profit private carrier basis, subject to the following conditions: (1) the licensee must maintain access to and control over all facilities authorized under its license; (2) all sharing and private carrier arrangements must be conducted pursuant to a written agreement to be kept as part of the station records; (3) the licensee must keep an up-to-date list of system sharers and private carrier subscribers; and (4) such records must be kept current and must be made available upon request for inspection by the Commission.^{9/}

II. The Commission Should Allow Common Carrier and Non-Common Carrier Use and Licensing of Microwave Transmitters

9. The NPRM proposes to incorporate existing Section 21.119 which places limitations on the use of microwave transmitters. Specifically, the proposed Section 101.113 will retain the prohibition on licensing or using common carrier microwave transmitters for non-common carrier purposes. Frankly, there is no benefit in the retention of this rule section. As indicated earlier, there is virtually no distinction in frequency allocation for all

^{9/} To be inserted at NPRM, Appendix A, pp. 87-88.

point-to-point microwave services with the exception of the 2 GHz band. Therefore, this rule does not preserve any frequencies allocated to a particular service. The frequencies are fungible and are licensed on a first-come/first-served basis.

10. Moreover, as indicated above, the technological advances made in microwave equipment have made more spectrum capacity available. With the new microwave equipment, the transmitters do not have to be dedicated on a full-time basis to a particular service.

11. Finally, the concept of dual licensing is not a new one for the Commission. In fact, the Commission currently allows dual licensing in two interpretations of the concept. First, the same transmitter can be licensed to different entities. Section 90.185 permits multiple licensing of radio transmitting equipment in the mobile radio service. The private operational-fixed microwave service also permits multiple licensees to use the same transmitters. Second, the same transmitter can be licensed for different uses. The Commission recently stated that it favored issuing a single license to mobile service providers

offering both commercial and private services on the same frequency.^{10/}

12. Proposed Section 101.133 serves no useful purpose. In fact, the Commission eliminated the same rule when rewriting its Public Mobile Service rules, Part 22. The Commission indicated:

Advances in technology, such as improved digital transmission techniques and store-and-forward technology, have resulted in dramatically increased capacity, thus reducing the need for a transmitter to be devoted on a full-time basis to common carrier uses. Second, licensees providing wide-area service could achieve substantial economies of scale by sharing transmitters when building a regional or nationwide system without diminishing the licensee's quality of service. . . . Lastly, increased competition in the industry provides an assurance that service to existing customers will not suffer from joint use of transmitters when the carriers are offering distinct services on different channels.^{11/}

For many of the same reasons that caused the Commission to eliminate Section 22.119, Southern believes it is

^{10/} In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GEN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, ¶ 115 (1994).

^{11/} In the Matter of Revision of Part 22 of the Commission's Rules Governing the Public Mobile Service, Amendment of Part 22 of the Commission's Rules to Delete Section 22.119 and Permit Concurrent Use of Transmitters in Common Carrier and Non-Common Carrier Service, CC Docket No. 92-115, CC Docket No. 94-46, 9 FCC Rcd 6513 (1994).

appropriate and useful to eliminate the same rule section for Part 21 microwave systems. Accordingly, Southern recommends complete deletion of the proposed Section 101.133 from the proposed rules.

III. The Commission Should Extend the 21-Day Minor Modification Rule to Private Operational-Fixed Licensees

13. Section 101.59 proposes to incorporate Section 21.41 of the point-to-point common carrier rules which states that an application to modify the microwave facilities will be deemed licensed on the 21st day following the date of the public notice. The Commission does not propose to extend this rule to Part 94 licensees. Southern believes that this rule section should be extended to Part 94 licensees. Since the Commission is proposing to apply many of the Part 21 licensing and application procedures to Part 94 applicants and licensees, it seems inequitable not to extend the same favorable licensing policies to private operational-fixed licensees. Moreover, the proposed Part 101 consolidates the rules which distinguish between major and minor modifications, and both services must adhere to the same licensing procedures regarding license modifications. Part 94 licensees should not be prejudiced, and should be allowed to have their minor

modification applications deemed authorized on the 21st day following the date of the public notice. Accordingly, Southern seeks insertion of the term "private operational-fixed microwave" in the list of services enunciated in the proposed Section 101.59(b)(1).^{12/}

IV. The Commission Should Adopt the More Streamlined Part 94 Application Procedures for both Part 94 and Part 21 Microwave Applicants

14. The proposed Part 101 rules adopt the corresponding Part 94 and Part 21 application procedures for private operational-fixed and point-to-point microwave applicants. For example, proposed Section 101.13 adopts Sections 94.25(d), (e) and (f) governing filing of applications as well as Section 94.27 governing application forms. Whereas, proposed Section 101.15 adopts Sections 21.7 and 21.11 governing the application forms to be used for public fixed radio service. To reduce the regulatory burden for both microwave applicants and the Commission, Southern recommends utilizing the Part 94 application form and procedures for both services. The Part 94 filing procedures are simpler than Part 21 procedures in that there are no required secondary filings (i.e., no certification of construction completion) and no

^{12/} To be inserted, NPRM, Appendix A, p. 60.

mandatory annual reports to be filed (i.e., no licensee qualification reports). Elimination of these burdensome filing requirements simplifies the microwave rules, and creates a more harmonious set of consolidated rules. Where possible, Southern believes that the more streamlined rules should be applied to both services. Hence, Southern recommends adoption of the proposed Section 101.13, but deletion of proposed Section 101.15. To the extent that the Commission believes that the Part 21 transfer and assignment rules must be retained, Southern recommends use of FCC Form 703 rather than FCC Form 702 currently used by Part 21 licensees.

V. The Commission Should Extend the Blanket Special Temporary Authority to Private Operational-Fixed Microwave Licensees

15. Finally, Southern seeks extension of the Blanket Special Temporary Authority ("BSTA") policy to Part 94 applicants. Although this policy is not codified under any Part 21 rules, the Commission's Microwave Branch in Gettysburg issued a public notice establishing this new STA policy. The policy allows a Part 21 licensee, when issued a BSTA, to begin construction and operation of its microwave facilities as soon as the underlying application appears on public notice as accepted for filing, thus alleviating the

need to file a separate STA request. This, as the Commission indicated, saves both the applicant and the Commission valuable administrative time and resource costs. Unfortunately, this policy does not apply to Part 94 applicants. Unless the Commission can provide a sound rationale for not extending this policy to Part 94 licensees, Southern sees no reason why this policy should not be extended to private operational-fixed microwave licensees. With the licensing procedures virtually the same, and now proposed to be governed by the same rule part, it again seems inequitable to extend such favorable operating authority to one microwave service over another. Accordingly, Southern seeks issuance of a separate public notice extending the BSTA authority to Part 94 licensees.

CONCLUSION

16. Southern wholeheartedly supports the Commission's efforts to streamline and simplify the existing Part 21 and Part 94 microwave rules. Southern believes that this NPRM is a step in the direction to deregulation and is in line with the Commission's goal of "Reinventing Government." The recommendations espoused herein merely foster these goals, and specifically help to efficiently and effectively use the microwave spectrum. More importantly, they create an

equitable operating environment for both common carrier and private carrier microwave licensees without jeopardizing the fundamental rules of the separate service. Accordingly, Southern seeks adoption of the NPRM as proposed and with the recommendations suggested herein. Specifically, the Commission should: (1) amend proposed Section 101.35 to allow Part 94 microwave licensees to lease reserve capacity to common carriers; (2) delete proposed Section 101.33; (3) apply proposed Section 101.59(b)(1) to Part 94 licensees to permit their minor modification applications to be deemed authorized on the 21st day following public notice; (4) delete proposed Section 101.15; and (5) extend the Blanket Special Temporary Authority policy to Part 94 licensees.

WHEREFORE, THE PREMISES CONSIDERED, The Southern Company respectfully requests that the Commission act upon its Further Notice of Proposed Rule Making in a manner consistent with the views expressed herein.

Respectfully submitted,

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